IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5956 OF 2007

M/s.Nandosal Industries ..Petitioner.

V/s.

Union of India & Ors. ..Respondents.

Mr.L.S.Shetty for petitioner.

Mr.P.S.Jetly with S.D. Bhosale for respondent.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 24TH AUGUST, 2007.

P.C. :-

Rule. Heard forthwith.

2. The petitioners are a partnership firm. They had preferred an appeal before the respondent No.4. It was their contention that though the order of adjudication was passed on 24th February, 2004, they received the same on 15th June, 2006. Considering the provision of section 19(2) of the Foreign Exchange Management Act what has to be counted is the date of receipt of the notice and consequently the appeal filed was within the limitation. It was contended that they had shifted the address and consequently if the order had been served on the old address by pasting, that would not be a proper service.

3. On the other hand, on behalf of the respondents, learned counsel points out that the order of adjudication was served on the petitioners way back in 2004 on the last known address in the presence of panch witness and on making a panchanama on 19th July, 2004. It is, therefore, submitted that there is a delay and considering the delay the Tribunal had no power to condone the delay. The order of the Tribunal is, therefore, within jurisdiction and consequently, this Court ought not to interfere in the exercise of its extra-ordinary jurisdiction.

4. In the first instance, it appears that the Tribunal proceeded on the footing that what would be applicable are provisions of section 52 of the FERA Act On merits on behalf of the petitioners, it was pointed out that though the amount involved was Rs.17,69.040/- the adjudicating authority proceeded as if the amount was Rs.1,76,90,400/- thereby causing grave miscarriage of justice.

5. We have heard learned counsel for the parties the very fact that the order was not served personally on the petitioners would by itself be an indication that the petitioners were not available on the address. The service was effected by panchanama by

pasting on the premises. The fact that panch witness had to be brought would mean that the premises were closed. In this context, the contention of the petitioners that they have already shifted at the relevant time was a factor which the Tribunal ought to have taken into consideration.

6. In our opinion, merely because some correspondences had been exchanged at the old address by itself would not result in holding that the petitioners were functioning at the old address. In the light of that the impugned order is set aside. We hold that the appeal filed was within time and direct the Tribunal to hear the appeal on merits in accordance with law.

6. Rule made absolute in above terms with no order as to costs.

(F.I.REBELL0, J.)

(J.P.DEVADHAR, J.)